

## **REMARKS**

### **Formal Matters**

Applicant wishes to thank the Examiner for the attention accorded to the instant application.

Claims 1-9 and 11 are the claims currently pending in the Application. Claims 1, 2, 3 and 8 are amended herein to more clearly recite the invention. Support for this amendment can be found in the specification on page 6, lines 17-18, page 10, lines 5-14, and page 14, lines 1-15.

### **Summary of Telephone Interview**

Applicant thanks the Examiner for the telephone interview of November 21, 2006, and for the summary of the interview mailed November 29, 2006. Applicant agrees with the Examiner's interview summary. The amendments proposed in the interview are replaced by the amendments to the claims submitted herewith.

### **Rejection of Claims under 35 U.S.C. § 112**

Claim 3 is rejected under 35 U.S.C. § 112, second paragraph, as being vague and indefinite. This rejection should be withdrawn based on the following comments and remarks.

The present invention discloses a novel technique for providing dynamic availability of eCommerce services, particularly services for sale, using distributed computing architecture through a web browser. A distributed computing platform provides the infrastructure needed to perform tasks such as remote event notification, services registration, and dynamic downloading of software, between clients and service

providers through use of the inventive architecture in the present application. The ultimate goal of the architecture disclosed herein is to provide dynamic access to services, particularly commercial services, from anywhere at anytime. For example, a service that would calculate mortgage payments or a service to render an image based on data provided could be offered. The inventive solution provided in the present application eliminates the need for a specific software interface or methodology for contacting a service so that the service can be initiated by an applet or another piece of software sitting on another server somewhere. Further, using the present invention, it does not matter what the service is, but instead that the service is there. Accordingly, the service offerings can change dynamically, and new services can be offered, and people (end users) or software systems can find those new services and use them immediately. This is particularly advantageous for commercial services or commercial transactions.

Applicant amends claim 1 to recite "said eCommerce service for performing commercial transactions" and amends claim 3 to recite "facilitating commercial transactions". Thus claim 1 recites commercial transactions or selling as part of the eCommerce service, and claim 3 positively recites that the sales or commercial transactions of the eCommerce server are facilitated. Applicant submits that claim 3 is not vague or indefinite and respectfully requests that this rejection be withdrawn.

Claims 8, 9, and 11 are rejected under 35 U.S.C. § 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships, such omission amounting to a gap between the necessary structural connections. Claim 8 is amended herein to more clearly recite the invention by positively reciting the LoadBalancer/ ComputeServer, and the computationally intensive jobs. Further, claim 8

is amended to recite that the availability of services is notified "in response to data provided by said network server to said client browser, said data based on stored user information of said client browser" and that the computationally intensive jobs are distributed by the LoadBalancer/ComputeServer. Accordingly, claim 8 positively recites a network server and elements connected thereto or in communication therewith, including at least one client browser, at least one LoadBalancer/ComputeServer, a database, and computationally intensive jobs. Claim 8 also recites eCommerce services and a Lookup Server which notifies the client browser (in communication with the network server) of the availability of one or more of the eCommerce services. Applicant points out that determining which jobs are computationally intensive jobs is one of the configurable options described in the specification on page 14, lines 1-15 (a computationally intensive job is an example of a job). Thus claim 8 clearly recites elements of a system, and the structural cooperative relationships of this system, without gaps between the necessary structural connections. Applicant respectfully requests that this rejection be withdrawn.

#### **Rejection of Claims 1-7 Under 35 U.S.C. §103**

The Examiner has rejected claims 1-7 under 35 U.S.C. §103(a) as being unpatentable over PointCast.com (hereinafter "PointCast"). This rejection should be withdrawn based on the comments and remarks herein.

PointCast discloses delivering headline news and stock data passively to a desktop and the Examiner contends that this teaches "a web server in communication with a browser of the user, the web server providing access control information" as recited in claim 1. Applicant disagrees. PointCast discloses that it is "Advertiser

supported, the PointCast Network is completely FREE. No subscriptions.” (NPL, Notice of References Cited, Office Action mailed October 10, 2006, “Information on PointCast Incorporated”, page 8 of 39). Thus PointCast does not describe the web server providing access control information as no access control information, not even a user id, is needed to use PointCast.

Further, the Examiner states that PointCast does not explicitly teach a Lookup Server configured to provide dynamic notification but that PointCast discloses all of the features and functions of the recited Lookup Server. Applicant disagrees. PointCast does not disclose or suggest “dynamic notification of the availability of the eCommerce service” as recited in Claim 1. PointCast discloses providing data, such as news, weather, sports, or stock reports, not notification of the *availability of a service*. PointCast merely notifies a user of data, such as the price of one or more stocks; PointCast does not notify a user that, for example, a program for performing calculations with stock prices is available for the user’s examination.

Further, as amended, claim 1 recites that the Lookup Server is configured to provide dynamic notification “in response to said access control information” and PointCast does not disclose or suggest this feature, as discussed above. Also, claim 1 is amended to recite “said eCommerce service for performing commercial transactions” and this feature is not disclosed or suggested in PointCast.

“When obviousness is based on a particular prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference.” *B.F. Goodrich Co., v. Aircraft Braking Systems Corp.*, 72 F.3d 1577, 1582 (Fed. Cir. 1996). The Examiner has provided no such showing. The Examiner merely states that it would

have been obvious to one of ordinary skill in the art at the time the invention was made that PointCast system has Lookup capability to be able to provide update to the prices of the ticker symbol. However, this notification of data or content is not dynamic notification of the availability of a service as recited in claim 1. To illustrate this distinction, applicant points out that a user of PointCast would be informed as to the value of a stock (data), while a user of applicant's invention would be informed of the existence and availability of a stock pricing service (an application). Accordingly, claim 1 is patentably distinguishable over the art of record in the application. Claims 2-7 depend from claim 1, incorporating all of the features and limitations in the base claim. Thus these dependent claims are patentable over the art of record in the application at least for the reasons that the base claim is patentable over the art of record in the application.

Further, the Examiner states that the art of record discloses only "remote event notification". Claim 2 is amended herein to recite "remote event notification for commercial transactions" to distinguish the present invention from the art of record in the application.

In addition, the Examiner states that "PointCast teaches the capability to [sic] soliciting users to visit an external website by activating the solicitation window on the browser" and cites page 12 of the reference. Applicant respectfully states that page 12 does not contain any mention of solicitation of users, or a solicitation window.

Accordingly, applicant respectfully requests that this rejection be withdrawn.

**Rejection of Claims 8, 9 and 11 Under 35 U.S.C. §103**

The Examiner has rejected claims 8, 9 and 11 under 35 U.S.C. §103(a) as being unpatentable over PointCast in view of "IBM DCE V3.1 for AIX and IBM DCE V3.1 for Solaris" (hereinafter "IBM"). This rejection should be withdrawn based on the comments and remarks herein.

The Examiner states that PointCast does not disclose either a database including user, group and services information, or a Lookup Server. In addition, the Examiner states that PointCast does not disclose computationally intensive jobs distributed for execution by the LoadBalancer/ComputeServer but that IBM teaches this feature. IBM states that one practical application of DCE V3.1 is load balancing but does not provide any further disclosure. Thus "computationally intensive jobs distributed for execution" as recited in claim 8 is not taught in either PointCast or IBM. Accordingly, claim 8 is patentably distinct from the art of record in the application. Claims 9 and 11 depend from claim 8, incorporating all of the features and limitations of the base claim. Thus claims 9 and 11 are patentably distinct from the art of the record in the application for at least the reasons that claim 8 is patentably distinct from the art of record in the application.

It has been held that "[t]o prevent the use of hindsight based on the invention to defeat patentability of the invention ... the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed." *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998).

In the present application, an inventive solution to at least the problem of

providing remote access to services available on a network is disclosed and claimed. The solution includes providing dynamical notification of the availability of these services using at least a network server, at least one client browser, a database with contents including user, group and services information, the database in communication with the network server, a LoadBalancer/ComputeServer in communication with the network server, and a Lookup Server. A skilled artisan presented with this problem might first look to PointCast for a possible solution. However, while PointCast discloses a network server and at least one client browser, the Examiner states that PointCast fails to teach a Lookup Server and a LoadBalancer/ComputeServer. With the teaching of PointCast, the skilled artisan would NOT look to IBM for a solution to the problem of the present invention because IBM discloses only an environment for supporting "the creation, use, and maintenance of distributed applications in a diverse network-computing environment" (page 1, column 1); IBM does not disclose specific hardware or software applications, such as a Lookup Server. A skilled artisan would not look to a system for creation and/or maintenance of applications to solve the problem of the present invention which is to dynamically notify a user of the availability of a service.

The Federal Circuit has stated that the PTO must explain all material facts relating to a motivation to combine, and that "assumptions about common sense cannot *substitute* for evidence thereof". *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1366-7 (Fed. Cir. 2006) (emphasis in original). As discussed above, the Examiner's assumption that one of ordinary skill in the art at the time the invention was made would have incorporated IBM's teachings in the teachings of PointCast is not supported with evidence because, *inter alia*, combining PointCast with

Bolle to solve the problem of applicant's invention is inapposite. Thus the Examiner has not established a prima facie case of obviousness.

Therefore, Applicant respectfully submits that independent claim 8 is patentably distinguished over any art of record in the application. Claims 9 and 11 depend from claim 8, incorporating all of the features and limitations of the base claim. Thus claims 9 and 11 are patentably distinguished over any art of record in the application for at least the reasons that independent claim 8 is patentably distinguished over any art of record in the application. Applicant respectfully requests that this rejection be withdrawn.

#### **Conclusion**

For at least the reasons set forth in the foregoing discussion, Applicant believes that the Application is now allowable and respectfully requests that the Examiner consider the claims as amended herein and allow the Application. Should the Examiner have any questions regarding this Amendment, or regarding the Application generally, the Examiner is invited to telephone the undersigned attorney.

Respectfully submitted,



Katherine R. Vieira  
Registration No. 47,155

SCULLY, SCOTT, MURPHY & PRESSER, P.C.  
400 Garden City Plaza, Suite 300  
Garden City, New York 11530  
(516) 742-4343

KRV/vh